

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 383, FOOD AND DRUGS ACT.

ADULTERATION OF COFFEE.

On or about February 4, 1910, Thomas Roberts & Co., Philadelphia, Pa., shipped from the State of Virginia to the State of Pennsylvania, 1,100 bags of green coffee. Analysis of samples of this product, made by the Bureau of Chemistry, United States Department of Agriculture, showed it to be apparently adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the said shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Eastern District of Pennsylvania. In due course a libel was filed in the District Court of the United States for the Eastern District of Pennsylvania against the said 1,100 bags of green coffee, in substance and form as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF
PENNSYLVANIA.

UNITED STATES OF AMERICA	}	Libels for Condemnation. No. 5 of 1910.
v.		
ELEVEN HUNDRED BAGS GREEN COFFEE,		
late in the possession of Thomas Roberts and Company.		

To the Honorable, the Judges of the United States District Court, for the
Eastern District of Pennsylvania:

The libel of the United States of America, by J. Whitaker Thompson, Attorney
of the United States for the Eastern District of Pennsylvania, who in this case
prosecutes on behalf of the said United States, as well as on behalf of all persons
interested,

Respectfully Represents as follows:

1. This libel is filed by the United States of America in its own right and
prays seizure for condemnation of a certain article of food, to wit: green coffee,
as hereinafter particularly set forth, in accordance with the provisions of the

Act of Congress in such case made and provided, approved the thirtieth day of June, A. D. 1906.

2. Your libellant represents to this Honorable Court that in the city of Philadelphia, in the State of Pennsylvania and the Eastern District thereof, and within the jurisdiction of this Honorable Court, and in the possession of Thomas Roberts and Company (the names of the members composing the said firm of Thomas Roberts and Company, being to this libellant as yet unknown), at its place of business, to wit: premises located at 116 South Front Street, in the said city of Philadelphia aforesaid, is a certain article of food, to wit: green coffee, which had theretofore been transported from one State in the United States to another State in the said United States, to wit: from the city of Newport News, in the State of Virginia, to the city of Philadelphia, in the State of Pennsylvania, and Eastern District thereof, and being of the particular description following, to wit: eleven hundred bags, each of which said bags then and there containing about one hundred pounds of a certain article of food, to wit: green coffee.

3. Your libellant further represents that the said article of food, to wit: green coffee, so as aforesaid particularly described, is and was illegally held within the jurisdiction of this Honorable Court, and is liable to condemnation and confiscation as is provided in the said Act of Congress approved the thirtieth day of June, A. D. 1906, for the following reasons:

The said article of food, to wit: green coffee, hereinbefore described, was heretofore, to wit: on the fourth day of February, A. D. 1910, consigned by the said firm of Thomas Roberts and Company, at Newport News aforesaid, to the said firm of Thomas Roberts and Company, at its place of business, to wit: 116 South Front Street, in the city of Philadelphia, State of Pennsylvania, which said article of food, contained in the said eleven hundred bags, described as aforesaid, was transported by the Pennsylvania Railroad Company, from the city of Newport News aforesaid to the city of Philadelphia aforesaid, and which said article of food, to wit: green coffee, is and was as aforesaid in the possession of Thomas Roberts and Company, the said firm of Thomas Roberts and Company being then and there consignor and consignee as aforesaid, in the original unbroken packages, and which said article of food, to wit: green coffee, so shipped and transported as aforesaid, and being then and there for sale, is and was at the time of the said shipment and transportation and receipt thereof by the said Thomas Roberts and Company, consignee as aforesaid, adulterated within the meaning of the Act of Congress aforesaid, in manner following, to wit:

(a) The said article of food, to wit: green coffee then and there consisted in whole or in part of a filthy vegetable substance having a pronounced musty odor.

(b) The said article of food, to wit: green coffee, so shipped and transported as aforesaid, is and was at the time of the shipment and transportation, adulterated in that it then and there consisted in whole or in part of a filthy vegetable substance having a pronounced musty odor.

(c) The said article of food, to wit: green coffee, so shipped and transported as aforesaid, and received by the said Thomas Roberts and Company, consignor and consignee as aforesaid, for sale as aforesaid, is and was at the time of the said shipment and transportation as aforesaid, and at the time of the receipt of the same by the said Thomas Roberts and Company, consignor and consignee as aforesaid, for sale as aforesaid, adulterated within the meaning of the said Act of Congress as aforesaid by then and there consisting in whole

or in part of a filthy vegetable substance, having a pronounced musty odor, and being then and there unfit for food.

4. Your libellant further represents that all the matters above set forth are true; that the said article of food, to wit: green coffee, hereinbefore particularly described, so shipped and transported as aforesaid, and received by the said Thomas Roberts and Company, consignor and consignee as aforesaid, for sale as aforesaid, and being in the original unbroken packages as aforesaid, being in violation of the said Act of Congress, your libellant prays, in consideration of the premises:

1. That the said article of food, to wit: green coffee, particularly described in paragraph 2 hereof, and adulterated as aforesaid, may be proceeded against and seized for condemnation in accordance with the provisions of the Act of Congress approved the thirtieth day of June, A. D. 1906, and that to this end this Honorable Court may order the process of attachment to issue in the due form of law, and that the said Thomas Roberts and Company, consignor and consignee as aforesaid, and all other persons having or pretending to have any right, title, or claim in and to the said article of food, to wit: green coffee, above mentioned and particularly described, may be cited to appear herein and answer all and singular the premises aforesaid.

2. That by an appropriate order this Honorable Court may adjudge and decree that the said article of food, to wit: green coffee, so particularly described, be condemned at the suit of this libellant according to the provisions of the said Act of Congress approved the thirtieth day of June, A. D. 1906.

3. That this Honorable Court may make all such orders and may grant your libellant a decree for the costs of this proceeding against Thomas Roberts and Company, consignor and consignee as aforesaid, the owners or holders of the said article of food, to wit: green coffee, condemned, should such costs not be satisfied out of the proceeds of the same.

4. And that your libellant may have such other and further relief as the nature of the case may require.

On February 24, 1910, Thomas Roberts & Co. entered an appearance and filed their answer to the libel in substance and form as follows:

To the Honorable the Judges of the United States District Court for the Eastern District of Pennsylvania:—

Thomas Roberts Sr., George W. B. Roberts, William B. Montgomery and Thomas Roberts Jr., trading as Thomas Roberts and Company answering the said libel state as follows:

First—The respondents admit the facts stated in paragraph two of the libel.

Second—The respondents deny that the green coffee referred to in paragraph three of the libel is or was illegally held within the jurisdiction of this Honorable Court, and that the said coffee is liable to condemnation and confiscation as is provided in the Act of Congress approved June 30, 1906; and they further deny that the said coffee referred to in the said paragraph as in the possession of the respondents is or was adulterated within the meaning of the Act of Congress aforesaid; and they also deny that such coffee “then and there consisted in whole or in part of a filthy vegetable substance having a pronounced musty odor;” and they also deny as wholly and entirely untrue the allegation contained in Section (c) of Par. 3 of the libel, as follows: “The said article of food, to wit: Green coffee, so shipped and transported as aforesaid, and received by the said Thomas Roberts and Company, consignor and consignee as afore-

said, for sale as aforesaid, is and was at the time of the said shipment and transportation as aforesaid, and at the time of the receipt of the same by the said Thomas Roberts and Company, consignor and consignee as aforesaid, for sale as aforesaid, adulterated within the meaning of the said Act of Congress as aforesaid by then and there consisting in whole or in part of a filthy vegetable substance, having a pronounced musty odor, and being then and there unfit for food."

Third—Further answering said respondents say that the said eleven hundred bags of coffee were a part of the cargo of the steamer "Hamilton" on a recent voyage from New York to Norfolk, Virginia. A fire occurred on the said steamer and fresh water from a regular city fire plug in Norfolk was turned upon the said coffee and wet it. The respondents thereafter bought the coffee and proceeded to dry it by spreading it on the floor of a large warehouse in Norfolk. Finding that the coffee did not dry fast enough in this way it was transported to Newport News and there dried out in the dryer of a grain elevator. In this process some heat was applied and the coffee was in part roasted, and its color was changed. The process of drying in this way reduced the average bag of the said coffee from a weight of one hundred and thirty-two pounds to one hundred and twenty-two pounds so that the bags when removed from Newport News to Philadelphia contained ten pounds less moisture than the usual coffee of commerce. In the process of drying no coloring matter, adulteration or anything whatever was put in the coffee. The only change was in the discoloration caused by the heat, and in the loss of weight caused by loss of moisture. After the said coffee was removed to Philadelphia some of it was roasted under the inspection of one of the Federal Inspectors. Said inspector took samples before the coffee was put in the roaster and samples after the coffee was partly roasted, and after it was fully roasted. Liquid coffee was made from portions completely roasted and tested by experts who pronounced it equal to the average Santos coffee of high grade on the market. The respondents further aver that about thirty bags of coffee in the lot which they purchased never became wet. Samples were taken from these bags and also samples taken from the bags that had been wet and dried, and both class of samples were fully roasted and the drink made from both sets of samples showed no difference whatever. Respondents finally aver that the said coffee is good, wholesome coffee, has no foreign odor, is not musty, nor hidey, nor mouldy, and is not as averred in the libel, "a filthy vegetable substance having a pronounced musty odor."

And the respondents having fully answered pray that the libel in this case be dismissed.

ALBERT B. WEIMER,
Attorney for Respondents.

Thereafter, on March 29, 1910, the following amendment to the libel was filed:

Be it remembered that J. Whitaker Thompson, United States Attorney for the Eastern District of Pennsylvania, who for the said United States in this behalf prosecutes in his own person, comes here into the said District Court of the United States for the Eastern District of Pennsylvania, on the twenty-ninth day of March, in the year of our Lord one thousand nine hundred and ten, and for the said United States of America files the following amendment and additional cause of forfeiture to the libel heretofore filed on behalf of the said United States in the above entitled cause, the said amendment and addi-

tional cause of forfeiture to be inserted at the conclusion of section (c), paragraph 3 of said libel, in the seventeenth line of page 4 thereof, as follows:

“(d) The said article of food, to wit: green coffee, then and there consisted and now consists wholly or in part of a decomposed vegetable substance, in that the said green coffee was and is wholly or in large part decomposed.”

On the same date the defendant filed the following answer to the amended libel:

The Respondent, Thomas Roberts & Company in answer to the amended libel filed in this cause aver that it is not true as averred that “the said article of food, to wit: green coffee then and there consisted and now consists wholly or in part of a decomposed vegetable substance,” wholly or in large part decomposed.

ALBERT B. WEIMER,

Attorney for Thomas Roberts & Company.

On April 1, 1910, the case came on for hearing on the libels and answers and after hearing the testimony and argument, on April 14, 1910, the court rendered its opinion in substance and form as follows:

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES	}	No. 5, April Sessions, 1910.
v.		
1100 BAGS OF COFFEE		

LIBEL FOR FORFEITURE.

McPIERSON, *District Judge.*

This action, which is based upon the Federal Pure Food Act of 1906, sought to forfeit a large quantity of coffee on the ground that it was filthy, decomposed, or putrid. Defense was made by the claimants, Thomas Roberts & Company, and by agreement of the parties the issues of fact were tried before the court without a jury. Since the trial the case has been fully argued, and the Government then abandoned the charges that the coffee was either decomposed or putrid. This left for consideration the averment that the coffee was filthy, and upon this point I need only say, without discussing the testimony in detail, that in my opinion the Government has failed to sustain the burden of proof which rests upon it whenever it attempts to forfeit the property of a citizen.

I therefore find the issue of fact in favor of the claimants, and direct the clerk to enter judgment on this finding.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,

Secretary of Agriculture.

WASHINGTON, D. C., *May 23, 1910.*

